

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 42 of 1976

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AHMEDABAD MUNICIPAL CORPN.

Versus

HAIRS OF AMARSINH LALLUBHAI

Appearance:

MR PRASHANT G DESAI for Petitioner
MR DD VYAS for Respondent No. 1
DELETED for Respondent No. 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 13/04/99

ORAL JUDGEMENT

This appeal is directed against the judgement and decree dated 30/11/1974 passed by the learned Principal Judge of the City Civil Court, Ahmedabad decreeing Civil Suit No. 1249/71. The respondent - plaintiffs had filed

the suit for a permanent injunction against the Ahmedabad Municipal Corporation, appellant herein, to restrain it from enforcing the notice dated 8/1/1971 issued under Rule 27 of the Bombay Town Planning Rules.

2. The plaintiffs contended that the plaintiffs were the tenants on the land belonging to late Naginlal Vanilal Desai from the date prior to 1968. The superstructures in the form of shops were constructed by the plaintiffs on the land of survey no. 58, which was included within the Municipal limits on 13/8/1958 and since then, the Corporation is recovering various taxes from them as they occupy the same as persons in possession of the suit shops. The said survey No.58 and other survey numbers of Chhadavad village were included in the Town Planning Scheme No.21 under the Bombay Town Planning Act, 1955. On the date of declaration of intention to frame the Town Planning Scheme as well as on the date when the scheme was finally sanctioned, the plaintiffs were occupiers of final plot No. 432 and the plaintiffs were therefore persons interested and persons affected so as to entitle them to a special notice under Sub Rules [3] and [4] of Rule 21 of the Bombay Town Planning Rules, 1955. However, without giving such notice, the Town Planning Scheme was framed and notice u/s 27 of the Rules was issued on 9/6/1971 requiring the plaintiffs to give possession within seven days. The plaintiffs, therefore, challenged the same in the present suit.

3. The Corporation filed its written statement and contested the suit. The Corporation also denied that the plaintiffs were occupying the suit shops when the intention to prepare the scheme was declared by the local authority and that, even assuming so, the plaintiffs had no right in the lands, which were reconstituted under the scheme and the question of serving any special notice by the Town Planning Officer does not arise.

4. After considering the evidence on record and after hearing the parties, learned Principal Judge of the City Civil Court held that the plaintiffs except plaintiff No.5 proved that they were the persons interested and were, as such, entitled to a notice under Rule 21 [3] and [4] of the Bombay Town Planning Rules. It was further held that the plaintiffs also proved that they were not served with any such notice. Hence, the impugned notices u/s 54 of the Town Planning Act read with Rule 27 of the Rules framed thereunder are illegal, invalid and not enforceable as the Town Planning Scheme itself was vitiated and therefore, the plaintiffs were

entitled to the injunction as prayed for. Accordingly, the court passed the final order that the defendant Corporation is restrained permanently from dispossessing the plaintiffs [except plaintiff No.5] from the suit plots or removing the structures standing thereon in pursuance of the impugned notices. It is against this judgement and decree that the Corporation has filed the present appeal.

5. After the decision of the trial Court, an important judgement of the Apex Court has been rendered interpreting the provisions of the Bombay Town Planning Act and the Bombay Town Planning Rules. In *Jashwant Singh Mathura Singh and another v/s Ahmedabad Municipal Corporation and others* reported in AIR 1991 SC 2130, the Apex Court has held that issuance of special notices under special rule [3] of rule 21 and sufficient opportunity under sub-rule [4] thereof are mandatory as they are to subserve the basic concept of the fair and just procedure and therefore, noncompliance with the said provision vitiates the validity of the final scheme.

6. In view of the aforesaid binding decision of the Apex Court, the judgement of the trial Court is required to be confirmed. However, Mr. P.G.Desai, learned counsel for the appellant Corporation has submitted that the scheme may not be treated as vitiated, if alternative accommodation is offered to the respondents - plaintiffs as held in para 6 of the aforesaid judgement of the Apex Court.

7. In the facts and circumstances of the case and in view of the fact that the respondent - plaintiffs or their successors in interest have been carrying on business in the suit shops for the last more than 40 years, it will be open to the appellant Corporation to provide alternative premises to the respondents or their successors in interest by allotting suitable land / shops to them within the city of Ahmedabad and it will be then for the respondents or their successors in interest to decide whether they want to accept the alternative premises or they would take the risk of being served with a fresh notice under the Town Planning Act and the Rules thereunder, if at all the appellant Corporation decides to issue such notices in future.

8. Subject to the aforesaid observations and liberty, the appeal is dismissed.

parmar*